IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL Nos. 643 & 651 OF 2005

WRIT APPEAL NO : 643 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 07/03/2005 in WP No. 2024 OF 2005 on the file of the High Court.)

Between:

C.Sainath, S/o.C.Mallaiah,
H.No.11-3-366/1&2, Srinivasa Nagar, Parsiguda,
Secunderabad.

..... APPELLANT

AND

1. N.T.R.University of Health Sciences, Vijayawada, Krishna District, rep.by its Registrar.
2. The Vice Chancellor, N.T.R.University of Health Science, Vijayawada, Krishna District.

.....RESPONDENTS

Counsel for the Appellant: Mr.NANDIGAM KRISHANA RAO

Counsel for the Respondents: Mr.J.Sudheer, Special G.P.

for the Advocate-General.

WRIT APPEAL No. 651 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 07/03/2005 in WP No. 2266 OF 2005 on the file of the High Court.)

Between:

D.Srikanth Kumar, s/o Lakshmana Murthy,
r/o Kachiguda, Hyderabad.

..... APPELLANT

AND

1. The Osmania Medical College, Hyderabad, represented by its Principal.
2. NTR Health University of Health Sciences, Vijayawada, rep., by its Registrar.
3. The Vice-Chancellor, NTR Health University of Health Sciences, Vijayawada.

.....RESPONDENTS

Counsel for the Appellant: Mr.NANDIGAM KRISHANA RAO

Counsel for Respondents: Mr. J.Sudheer, Special Government

Pleader for the Advocate-General.

The Court made the following :

ORAL COMMON JUDGMENT:

(per Honourable Sri Devinder Gupta, the Chief Justice)

These two Appeals have been preferred by the appellants against the dismissal of their separate writ petitions by the learned Single Judge by common order dated: 7.3.2005.

The facts, in brief, are that the petitioner in Writ Petition No. 2266 of 2005 was pursuing M.B.B.S. course in the first respondent college. He appeared for the final year Part-II examinations held in the month of October, 2004. When he went to attend the Gynaecology paper, the Invigilator took his hall-ticket and permitted him to write the examination. Flying Squad visited the examination hall and called upon the petitioner to explain why he was writing on the backside of the hall-ticket. The

petitioner-appellant gave oral explanation. The Flying Squad seized the Hall-Ticket of the petitioner from the Invigilator. The petitioner, thereafter, was served with the notice dated: 27.12.2004 alleging that it was reported by the Flying Squad that copying material and the hall-ticket with written material on it were found in possession of the petitioner-appellant. He was called upon to show cause why his appearance from the examination should not be cancelled and why he should not be debarred from appearing in any examination and prosecuting further studies. The petitioner-appellant stated that the allegations in the show-cause notice were incorrect, and, as a matter of fact, no copy material relevant to the examination was recovered from him. Reply was considered by the respondent-University. On 27.1.2005, petitioner was informed that as per the resolution of the Disciplinary Committee and as per the Standing Orders of the N.T.R. University of Health Sciences, the petitioner is disqualified from appearing in any University examination for a period of one year including September/October, 2004 examination as punishment for use of unfair means during examinations. The petitioner was informed that he is permitted to appear for the examination to be conducted in September/October, 2005 subject to acquiring eligibility for the same.

Insofar as the second case is concerned, writ petitioner in W.P.No. 2024 of 2005 also appeared for Final Year MBBS Part-II Examination held in the month of October/November, 2004 and on the same day, on 29.10.2004, while he was appearing in Gynaecology paper, the Flying Squad visited the examination hall and found that some rough work was written on the hall-ticket. The petitioner, however, was allowed to continue to finish the paper, but, was served with the show-cause notice on 27.12.2004 on similar allegations as in the case of the other petitioner, and, similar reply was given by the petitioner to the show cause notice that no copying material relevant to the examination was found in his possession and the notice was bad. Similar impugned proceedings dated: 27.1.2005 were issued by the respondent-University disqualifying him from appearing in the University examination. Though these orders were challenged in two separate writ petitions, learned Single Judge, after considering the stand taken by the respondent-University in the counter-affidavits that the writ appellants had indulged in unfair practice and violated the Standing Order, held that they were rightly found guilty and were rightly punished, with which, no interference is called for by this Court in exercise of its writ jurisdiction. Learned Single Judge considering the scope of

judicial review vis-à-vis the malpractice that it is very limited, declined to interfere in the matter and dismissed the writ petitions. Separate appeals have now been preferred.

We have heard the learned counsel for parties at the admission stage.

In both the cases, show cause notices are similarly worded and we will reproduce one of the show-cause notices served upon the petitioner in W.P.No. 2024 of 2005, which reads:

> "The Flying Squad who visited Osmania Medical College on 29.10.2004 has caught Mr. C.Sainath, Reg.No. 9907137 who found copying material all over the hall ticket front and back in the examination hall. A copy of the same was taken from the candidate and handed-over to the University.
>
> As such, the candidate is directed to explain as to why his appearance from the examination should not be cancelled and why he should not be debarred from appearing in any examination and for prosecuting further studies for his/her misconduct. He/She should submit his explanation on or before 5-1-2005. If the candidate explanation does not reach this office on or before the specified date, his case will be disposed off on the basis of the material already available with this office.
>
> The candidate should acknowledge the receipt of this Memo."

We need not quote the reply submitted by the writ petitioner, but, reply is also similar that no copying material relevant to the examination was found in their possession and they were not guilty of having committed any malpractice.

On considering the reply to the show-cause notice, the matter was examined by the Disciplinary Committee. The Disciplinary Committee examined the case of both the writ petitioners along with various other students, and, on 17.1.2005 meeting was held and the minutes of the meeting were recorded, wherein the remarks/findings were recorded against each of the students. In the case of writ petitioner in W.P. 2024 of 2005, the findings recorded are:

> " Found guilty of having written material on hall ticket in the examination hall. The available evidence does not prove that he has actually indulged in copying"

With respect to the other writ petitioner, findings are recorded as follows:

> " Found guilty of having written material on hall ticket in the examination hall. The available evidence does not prove that he has actually indulged in copying."

From the above, it is clear that the Disciplinary Committee recorded findings of fact against the petitioners that they were found guilty of having written material on hall-ticket in the examination hall and that the available evidence does not prove that they actually indulged in copying. Based on these findings, the following order was served upon the petitioners individually:

> "As per the resolution of the disciplinary committee vide reference 3rd cited and as per the standing orders of the NTR University of Health Sciences, on punishment for use of unfair means, Mr.C.Sainath, Regd. No. 9907137, Final MBBS Part II student, is disqualified from appearing in any University examination for September/October, 2004 examination as punishment for use of unfair means during examinations.
>
> The candidate with Regd. No. 9907137 is permitted to appear for the examination to be conducted in March/April, 2003 subject to acquiring eligibility for the same.
>
> The candidate should acknowledge the receipt of the proceedings."

There is no dispute on the question that the scope of judicial review in academic matters, more particularly, the cases, which pertain to malpractice, is very limited. Courts will never sit in appeal over the conclusions arrived at by the authorities concerned and will not substitute its own decision. Interference from the courts can be only in limited classes of cases, namely, violation of the Principles of Natural Justice, and, in cases where the order is perverse. Therefore, learned Single Judge rightly considered the scope of interference, but did not go into the question whether or not the order was perverse. It is not a case where the petitioners claim that the order has been passed in violation of the Principles of Natural Justice. Their case has been that they were not found to be in possession of the copy material relevant to the examination and that the findings of the Disciplinary Committee were also that they were found to have written material on the hall ticket. But, there is no finding recorded by the Disciplinary Committee as to whether the written material was relevant to the examination or not. A copy of the Standing Orders has been placed on record and we quote clauses (1) and (5) of the Standing Orders issued by the Executive Council on punishment for use of unfair means during University examinations:

> "1) During the University examination if a candidate is found in mala fide possession of the papers, books or notes or written notes on his clothes, body or table or chair, which is relevant to the examination (s)he will be disqualified from appearing in any university exam for one year and if found having copied will be disqualified for two years."
>
> 5) If a candidate writes even a question or any thing concerned either on blotting paper, or any other piece of paper including question paper or hall ticket, or attempts to pass on question paper or part thereof he/she shall be disqualified for that examination."

A bare reading of the aforementioned clauses of the Standing Orders would show that only in the event of the candidate being found in possession of the material, which is relevant to the examination, that he can be found guilty of having used unfair means and only on recording such a finding, he could be punished. Mere possession of the material, which is not found to be relevant, will not amount to use of unfair means and the candidate cannot be punished. Therefore, what is necessary is that the show cause notice served upon the candidate must disclose that the material found in possession was relevant to the examination or that the candidate had written anything concerned on the question paper or on the hall-ticket. Unless the written material is concerned with that particular paper to be attempted by the candidate or that the written material is relevant to the examination, mere possession writing on hall-ticket or any other material will not be sufficient to find the candidate guilty of unfair means.

In the instant cases, neither in the show cause notice and the final orders, it is mentioned that material was relevant to the examination, nor the Disciplinary Committee recorded the finding that material in possession was relevant to the examination. Therefore, the orders passed on such findings by the University debarring the petitioners have to be termed as perverse. Since the orders are perverse, the respective orders impugned in the writ petitions are liable to be quashed and set aside and the Writ Petitions deserve to be allowed. Consequently, Writ Appeals are allowed, the impugned orders are set aside and the Writ Petitions are allowed with costs quantified at Rs.3,000/-, and the orders impugned in the writ petitions are set aside with further direction to the University to declare the petitioners' result within a period of two weeks from the date of the receipt of the writ

order from this Court.

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DEVINDER GUPTA, C.J.

25.3.2005.

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B.SESHASAYANA REDDY, J.

VR.

To

1. The Principal, Osmania Medical College, Hyderabad.
2. The Registrar, NTR Health University of Health Sciences, Vijayawada.
3. The Vice-Chancellor, NTR Health University of Health Sciences, Vijayawada.

4. Two CCs to the Advocate-General, High Court Buildings, Hyderabad (OUT).

5. 2 CD copies.

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